

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pinnacle Towers, Inc.)	File No. EB-02-TP-197
)	
Owner of Antenna Structure Registration)	NAL/Acct. No. 200232700016
Number 1030352 in Orlando, Florida)	
)	FRN 0005-7948-47
Sarasota, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: April 3, 2003**Released: April 7, 2003**

By the Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* (“Order”), we cancel a \$20,000 *Notice of Apparent Liability for a Forfeiture* (“NAL”) issued to Pinnacle Towers, Inc. (“Pinnacle”), owner of an antenna structure with antenna structure registration (“ASR”) number 1030352 in Orlando, Florida, for apparently violating Section 17.50 of the Commission’s Rules (“Rules”).¹ The alleged violation involved Pinnacle’s failure to maintain good visibility of the required antenna structure obstruction marking.

2. On July 9, 2002, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued an *NAL* for a \$20,000 forfeiture to Pinnacle, concluding that the paint on the lower two-thirds of the Orlando antenna structure was obstructed by coaxial cables attached to the structure in apparent willful and repeated violation of Section 17.50 of the Rules.² Pinnacle filed a response to the *NAL* on August 8, 2002 in which it seeks rescission or reduction of the proposed forfeiture. Among other things, Pinnacle argues that the Commission’s rules provide no guidance on when cables attached to an antenna structure are required to be painted and challenges the finding in the *NAL* that the cables were obstructing good visibility of the tower.

3. We disagree with Pinnacle’s argument that the Commission’s rules provide no guidance on when cables attached to an antenna structure are required to be painted. Section 17.23 of the Rules provides that unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the Federal Aviation Administration’s (“FAA’s”) painting and lighting recommendations for the structure, as referenced in FAA Advisory Circular AC 70/7460-1J, Obstruction Marking and Lighting. This Advisory Circular explicitly states that “[a]lternate bands of aviation orange and white are normally displayed on ... coaxial cable, conduits, and other cables attached to the face of a tower.”³ Pinnacle’s Orlando tower was constructed in 1998 and the ASR for this

¹ 47 C.F.R. § 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700016 (Enf. Bur., Tampa Office, released July 9, 2002).

³ FAA Advisory Circular AC 70/7460-1J, Obstruction Marking and Lighting, Chapter 3. Marking Guidelines,

tower explicitly requires that the structure be lighted and painted in accordance with FAA Advisory Circular AC 70/7460-1J. Indeed, Pinnacle acknowledges in its response to the *NAL* that its ASR requires it to comply with the requirements specified in FAA Advisory Circular AC 70/7460-1J. Thus, any cables attached to the face of Pinnacle's Orlando tower are required to be painted. Nevertheless, after further review of the record, we conclude that the evidence does not support a finding that the cables attached to Pinnacle's tower obstructed good visibility of the tower in violation of Section 17.50 of the Rules. Accordingly, we cancel the *NAL*. Because we are canceling the *NAL*, we need not address the other arguments raised by Pinnacle in its response.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,⁴ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁵ the *Notice of Apparent Liability for a Forfeiture*, NAL/Acct. No. 200232700016, issued to Pinnacle Towers, Inc. **IS CANCELED**.

5. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Pinnacle Towers, Inc., 301 N. Cattlemen Road, 3rd Floor, Sarasota, Florida 34232, and to its counsel, Thomas B. Magee, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Paragraph 33(c)(1)(g).

⁴ 47 U.S.C. § 504(b).

⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).